



September 20, 2001

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2001-4226

Dear Ms. Sims:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153392.

The City of Lubbock (the "city") received two requests for the photographs of certain city police officers. You also received a request for the personnel files of two police officers. You assert that you may withhold the photographs pursuant to section 552.119 of the Government Code. We assume that you have released the requested personnel files.

Section 552.119 excepts from public disclosure a photograph of a peace officer<sup>1</sup> that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1998). The submitted copies of photographs depict peace officers and you state that none of the exceptions are applicable. Moreover, you do not state that the peace officers have executed any written consents to disclosure. Thus, we agree that you must withhold the photographs depicting peace officers.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

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<sup>1</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

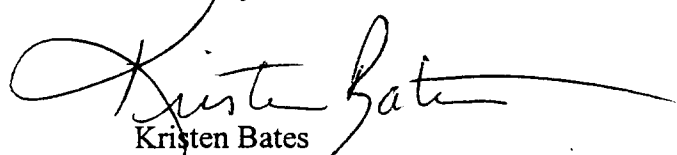
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", with a long horizontal flourish extending to the right.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/sdk

Ref: ID# 153392

Enc: Submitted documents

c: Mr. Jeff Klotzman  
FOX 34 News  
9800 University Avenue  
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(w/o enclosures)

Ms. Tanya Martinez  
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